

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 217 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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ISHAQ ASHRAF HAMID MIRZA

Versus

DISTRICT MAGISTRATE  
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Appearance:

MR MA KHARADI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 21/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Dahod, passed an order on August, 23, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Ishaq Ashraf Hamid Mirza of Dahod, under the

provisions of the said Act.

2. The grounds of detention indicate that the detaining authority took into consideration three offences registered against the detenu. The authority also considered statements of four witnesses and recorded a satisfaction that the fear expressed by the witnesses is genuine qua the petitioner and, therefore, powers under Section 9(2) of the PASA Act were required to be exercised by not disclosing the identity of the witnesses to the detenu, in public interest. The detaining authority considered the possibility of resorting to less drastic remedies, but came to a conclusion that detention under PASA Act was the only efficacious remedy that can be resorted to in order to immediately prevent the detenu from pursuing his illegal and anti-social activities.

3. The petitioner/detenu challenges the order of detention on various counts. However, Mr. Kharadi, learned advocate appearing for the detenu has restricted his arguments to the ground of improper exercise of powers under Section 9(2) of the PASA Act. He submitted that the statements have not been verified by the detaining authority, yet the authority has in unequivocal terms stated that it has personally satisfied about the need for exercise of powers under Section 9(2) of the PASA Act. He submitted that this reflects non-application of mind and improper exercise of powers by the detaining authority, resulting into infringement of right of the detenu of making an effective representation. The petitioner may, therefore, be allowed and the order of detention may be quashed and set aside.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He submitted that the detaining authority has relied upon the verification made by Sub-Divisional Magistrate and, therefore, it cannot be said that the subjective satisfaction recorded by the detaining authority is improper.

5. Considering rival side contentions, there is no dispute about the fact that the statements of anonymous witnesses have not been personally verified by the detaining authority. The verification is by Dy.S.P. and Additional District Magistrate, Dahod, who are different persons than the detaining authority himself. Against this, if the grounds of detention are considered, the detaining authority has, in clear terms, stated that the statement before the Sub-Inspector, Dahod town have been verified by Dy.S.P., Dahod as well as by himself

personally and he has himself personally found the fear expressed by the witnesses to be genuine. Therefore, to the extent, the averment in the grounds of detention that the detaining authority has personally verified the statements does not find support from the statements. There is no reference to verification by Additional District Magistrate at all and, therefore, it cannot even be inferred by any stretch of imagination that the detaining authority relied on verification by Additional District Magistrate. This reflects non-application of mind on part of the detaining authority. The subjective satisfaction for the need for exercise of powers under Section 9(2) of claiming privilege of not disclosing identity of the witness, therefore, stands vitiated. The result is that the right of the detenu of making an effective representation is infringed which would vitiate the detention and the petition deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated 23rd August, 1999, passed against the detenu is hereby quashed. The detenu-Ishaq Ashraf Hamid Mirza is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[ A.L. DAVE, J. ]

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